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he brought a second action for damages accrued since the first trial. *Held*, that the former judgment is no bar to recovery. *Canada-Atlantic & Plant S. S. Co. v. Flanders*, 165 Fed. 321 (C. C. A., First Circ.).

The main case apparently marks the first appearance of the doctrine of "constructive service" in the federal courts. It is to be regretted that after the repudiation of this doctrine in England and in the majority of our states another case should be added to the few in its support. For a discussion of the principles involved, see 14 HARV. L. REV. 294; 12 *ibid.* 435. Confusion seems to have arisen in treating the case as one of anticipatory breach.

DANGEROUS PREMISES — LIABILITY TO TRESPASSERS — CHILD TRESPASSER ON TURNTABLE. — The plaintiff, a boy of four or five years, entered the defendant's premises through a gap in its boundary hedge. While playing with companions on the defendant's turntable, which was not fastened, the plaintiff was injured. The jury found that the hedge was in a defective condition through the defendant's neglect. *Held*, that the defendant is liable. *Cooke v. Midland Great Western Railway*, 53 Sol. J. & Wkly. Rep. 319 (Eng., H. L., March 1, 1909).

This decision reverses that of the lower court, commented upon in 21 HARV. L. REV. 57. The case is noteworthy as being the first turntable case in the English courts, and as committing them to the rule of the weight of American cases — a result perhaps not to be expected. Though the report is rather meager, it would seem that the House of Lords has adopted without demur the fiction of "implied invitation," "allurement," and "attractive premises."

ESTOPPEL — ESTOPPEL IN PAIS — ACKNOWLEDGMENT OF LIABILITY ON CERTIFICATE OF DEPOSIT. — The defendant bank issued a non-negotiable certificate of deposit to A, who assigned to B, who assigned to the plaintiff. Later, the defendant told B that the certificate would be paid. On suit brought, the defendant claimed a banker's lien to satisfy claims against A. *Held*, that since the defendant would be estopped to deny its liability as against B, it is estopped in this suit in order to avoid circuity of action. *Old National Bank v. Exchange National Bank*, 26 Banking L. J. 119 (Wash., Sup. Ct., Sept. 24, 1908).

To raise an estoppel by misrepresentation there must be a misstatement of past or existing facts. A mere statement of intention is not enough. *Chadwick v. Manning*, [1896] A. C. 231; *Langdon v. Doud*, 10 Allen (Mass.) 433. Many instances where this rule is seemingly disregarded are in reality cases rather of contractual obligation than of pure estoppel. See *Coles v. Pilkington*, L. R. 19 Eq. 174, 177; EWART, ESTOPPEL BY MISREPRESENTATION, 69. The defendant bank's statement that it would pay the certificate is a mere statement of intention which is not binding in the absence of consideration. Moreover, in all cases, the one claiming the estoppel must have relied on the misrepresentation to his damage. *Simm v. Anglo-American Telegraph Co.*, 5 Q. B. D. 188, 211. So, where the maker of a promissory note makes an assertion to one who has already purchased it, that he has no existing defense against the note, he is not thereafter estopped from setting up such a defense, since no damage has been suffered in reliance on the assertion. *Windle v. Canaday*, 21 Ind. 248; *First National Bank v. Chaffin*, 118 Ala. 246. Hence the defendant in the principal case should not be estopped as against B, and *a fortiori* there should be no estoppel as against the plaintiff to whom no representation whatever was made.

FEDERAL COURTS — JURISDICTION BASED ON NATURE OF SUBJECT MATTER — JOINT ACTION INVOLVING FEDERAL QUESTION. — A joint action was brought against a railway company, its engineer, and fireman, for causing the death of the plaintiff's husband. The company had been created by Act of Congress, while the co-defendants and the plaintiff were citizens of a single state. Application was made for a remission of the case from the federal to the state court. *Held*, that as a federal question is involved, the federal court has jurisdiction. *Matter of Dunn*, 212 U. S. 374.